

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3 FRANCIS JOHNSON,

Case No. 2:20-cv-00852-APG-DJA

4                                   Plaintiff,

ORDER

5                                   v.

6 WILLIAMS, et al.,

7                                   Defendants.

8           This action began with an application to proceed *in forma pauperis* and a *pro se* civil  
9 rights complaint filed under 42 U.S.C. § 1983 by Francis Johnson, a former state prisoner. ECF  
10 Nos. 1-1, 4. On March 15, 2021, I issued an order allowing Johnson’s complaint to proceed but  
11 requiring him to file an application to proceed *in forma pauperis* for non-prisoners. ECF No. 5. I  
12 also stayed this action so that the parties could participate in the court’s Inmate Early Mediation  
13 Program.

14           Johnson failed to file an application to proceed *in forma pauperis* for non-prisoners.  
15 Magistrate Judge Albregts issued an order on May 11, 2021 informing Johnson that he must file  
16 an application to proceed *in forma pauperis* for non-prisoners, and that if he failed to file the  
17 application this case would be dismissed without prejudice. ECF No. 9 at 2. On June 4, 2021,  
18 Johnson failed to appear for a scheduled mediation conference (ECF No. 10), and he has not  
19 filed an application to proceed *in forma pauperis* for non-prisoners or otherwise responded to the  
20 court’s orders.

21           District courts have the inherent power to control their dockets, and “[i]n the exercise of  
22 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.  
23 *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may

1 dismiss an action based on a party's failure to prosecute an action, failure to obey a court order,  
2 or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995)  
3 (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258,  
4 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring  
5 amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming  
6 dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of  
7 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal  
8 for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir.  
9 1986) (affirming dismissal for lack of prosecution and failure to comply with local rules).

10 In determining whether to dismiss an action under these circumstances, the court must  
11 consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the  
12 court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public  
13 policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
14 alternatives. *See Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d  
15 at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

16 Here, the first two factors (the public's interest in expeditiously resolving this litigation  
17 and the court's interest in managing the docket) weigh in favor of dismissal. The third factor  
18 (risk of prejudice to the defendants) also weighs in favor of dismissal because a presumption of  
19 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court  
20 or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The  
21 fourth factor (public policy favoring disposition of cases on their merits) is greatly outweighed  
22 by the factors in favor of dismissal discussed herein. Finally, a court's warning to a party that his  
23 failure to obey an order will result in dismissal satisfies the "consideration of alternatives"

1 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at  
2 1424. The screening order I issued on March 15, 2021 required Johnson to file an application to  
3 proceed *in forma pauperis* within 30 days and expressly stated that, “if Johnson fails to timely  
4 file an application to proceed in forma pauperis by a non-prisoner or pay the full filing fee, I will  
5 dismiss this case without prejudice.” ECF No. 5 at 9. Judge Albregts’ May 11, 2021 order again  
6 warned Johnson that if he did “not timely comply with this order, this case will be subject to  
7 dismissal without prejudice.” Thus, Johnson had adequate warning that dismissal would result  
8 from his noncompliance with the court’s orders.

9 I therefore order that this action is dismissed without prejudice based on Johnson’s failure  
10 to file an application to proceed *in forma pauperis* for non-prisoners in compliance with this  
11 court’s March 15, 2021, and May 11, 2021, orders.

12 I further order the Clerk of Court to enter judgment accordingly.

13 DATED THIS 24th day of June 2021.

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UNITED STATES DISTRICT JUDGE